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February 24, 1999

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**VIA HAND DELIVERY**

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Declaration of Finality or for Other Relief;
CC Docket No. 91-142

Dear Ms. Salas:

Enclosed for filing with the Commission in CC Docket No. 91-142 are an original and 14 copies of a Request for Declaration of Finality or for Other Relief jointly filed by Alpha Cellular, Arizona Cellular Communications, Inc., and Crystal Communications, Inc.

Please contact the undersigned if you have any questions regarding this pleading.

Sincerely,

Stephen Kaffee

Enclosures

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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

**ORIGINAL**

| | | |
|---|---|---|
| In re Applications of | ) | CC DOCKET NO. 91-142 |
| | ) | |
| ALGREG CELLULAR ENGINEERING, et al. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| ARIZONA CELLULAR COMMUNICATIONS, INC. (assignee of Satellite Cellular Systems) | ) | File No. 10037-CL-P-318-A-89 |
| | ) | |
| For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 318, Arizona 1 - Mohave for Station KNKN 268 | ) | |
| | ) | |
| ALPHA CELLULAR | ) | File No. 10318-CL-P-410-A-88 |
| | ) | |
| For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 410A, Indiana 8 - Brown for Station KNKN 340 | ) | |
| | ) | |
| CRYSTAL COMMUNICATIONS, INC. (assignee of Crystal Communications Systems) | ) | File No. 10078-CL-P-A88 |
| | ) | |
| For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 606, Oregon 1 - Clatsop for Station KNKN 309 | ) | |

To: The Commission

**REQUEST FOR DECLARATION OF**
**FINALITY OR FOR OTHER RELIEF**

Arizona Cellular Communications, Inc, Alpha Cellular and Crystal Communications, Inc.

("Licensees"), herewith request, by their attorneys, that the Commission confirm that the orders it entered in its June 3, 1997 *Memorandum Opinion and Order* (the "Decision") with respect to Licensees, which terminated the revocation proceeding with respect to those licenses,[1] have long since become final, non-reviewable orders, and that the Licensees are consequently no longer parties to this proceeding. In the alternative, Licensees request that they be severed from the *Algreg* proceeding.

**There Is Nothing Pending with Respect to Licensees**

As we show below, none of the petitions for reconsideration of the Decision filed with the Commission sought reconsideration or review of the orders involving Licensees, and the only appeal of the Decision was dismissed by an order of the United States Court of Appeals for the District of Columbia Circuit which has long since become final.

**Petitions for Reconsideration Pending before the Commission**

Four petitions for reconsideration of the Decision were tendered to the Commission on or about July 3, 1997. Each pleading sought reconsideration or review of certain limited aspects of the Decision.

(1) Alee Cellular Communications ("Alee") sought review of the portion of the order that revoked Alee's license.[2]

(2) The parties which had from the outset sought the denial or revocation of

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[1] *Algreg Cellular Engineering*, 12 FCC Rcd 8148 at 8189, 8190 (¶¶ 101, 103) (1997). The action with respect to Alpha Cellular was subject to a condition which Alpha fulfilled by means of its *Recission*, which Alpha filed on June 11, 1997.

[2] *Algreg* at ¶ 104; 12 FCC Rcd at 8190. Alee's license was revoked on the basis of issues unique to it.

licenses in the case (referred to herein collectively as the "Petitioners"[3]) jointly filed a petition for reconsideration contesting the reinstatement or grant of licenses to several parties. However, the three Licensees had already settled the litigation with the Petitioners.[4] Accordingly, the Petitioners' petition for reconsideration expressly excluded the Licensees from its caption, and its text stated expressly that it did not seek review of the Commission's actions with respect to their licenses.[5]

(3) Licensees Cellular Pacific ("Cellular Pacific"), Data Cellular Systems ("Data") and North American Cellular ("North American") jointly filed a petition for reconsideration. This pleading raised no issues as to the grant or reinstatement of any license in the case.

(4) A group of applicants for the tentative selectee markets, who had never previously participated in the *Algreg* case tendered a "Petition for Reconsideration." That petition sought reconsideration of the Decision only insofar as it granted the applications of the

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[3] The following individuals and entities had been made parties to the proceeding by order of the Common Carrier Bureau or the administrative law judge and had participated in the hearings and subsequent proceedings before the Review Board and the Commission: the Applicants Against Lottery Abuse, Buckhead Cellular Communications Partnership, Cellular Applicants' Coalition, Miller Communications, Inc. and Skywave Partners, Inc., Thomas Domencich, Committee for a Fair Lottery, and ZDT Partnership.

[4] Crystal and Alpha settled with the Petitioners prior to the ruling of the Review Board on their petitions for reconsideration. In its *Algreg* decision, the Commission held that its approval was not required for settlements between licensees and other parties. However, the Commission did review the settlements and found them not to be contrary to the public interest. *Algreg* at ¶ 91; 12 FCC Rcd at 8184-85.

[5] Petition at 1-2. The Commission had already reviewed the settlements between these Petitioners and licensees Alpha and Crystal in the *Algreg* decision. The Petitioners had already entered into a settlement with Satellite, but, pursuant to the Commission's holding in the *Algreg* decision, such settlements between licensees and other parties are not subject to Commission approval. *Id.* at ¶ 89; 12 FCC Rcd at 8184.

tentative selectees. It did not seek review of the Commission's Decision with respect to the termination of any revocation proceeding. Thus, that filing did not challenge the Decision with respect to the Licensees, or their licenses for Arizona RSA 1 , Oregon RSA 1, and Indiana RSA 8.

**The Notice of Appeal**

Several other persons who were also former applicants for some or all of the markets that were involved in the *Algreg* case but who had never participated in that proceeding filed notices of appeal of the Decision to the United States Court of Appeals for the District of Columbia Circuit. On December 16, 1997, the D.C. Circuit dismissed those appeals.[6] On March 30, 1998 the Court denied rehearing, and the appellants did not seek review by the Supreme Court. Instead, on June 26, 1998, they lodged a "Statement for the Record" in the *Algreg* proceeding. The caption of that document was carefully crafted to include only the applicants or licensees as to which at least one petition for reconsideration previously had been filed, and, therefore, did not include the licenses of any of the Licensees which are filing this request, *i.e.*, the licenses for Arizona RSA 1, Oregon RSA 1 and Indiana RSA 8.

**Request for Relief**

Consequently, at least since the end of June 1998 there has been no request by any person, whether or not a party to the *Algreg* proceeding, before this Commission or any court, seeking any form of review of the Decision's orders with respect to Arizona RSA 1, Oregon RSA 1 and/or Indiana RSA 8. These Commission orders have therefore, we submit, become final and are

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[6] December 16, 1997 Order in *Turnpike Cellular Partners, et al v. F.C.C.*, Nos. 97-1421 and 97-1423.

no longer subject to reconsideration, appeal or other review. We request that the Commission confirm that this is the case and that, therefore, Licensees are no longer parties to the *Algreg* proceeding.

The public interest strongly supports the issuance by the Commission of a statement confirming the finality of its rulings as to the Licenses. The *Algreg* proceeding has already consumed the resources of the Commission and private parties for many years. While all of the parties to the proceeding have now reached settlement,[7] because of differences in the timing of those settlements and the timing of the grant of the licenses (*i.e.*, before initiation of the proceeding or by the Commission's decision in the case), the litigation status of some parties may differ from that of the Licensees herein. In this context, the Commission should act to trim down the proceeding, so that any parties and issues that remain in the proceeding are clearly defined.[8]

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[7] On February 5, 1999, a number of filings were made in the *Algreg* proceeding, in consequence of and reflecting the fact that the Petitioners (*i.e.*, those persons who had been granted party status by the Commission in 1991) had reached global settlements with all of the applicants in that proceeding whose applications were granted, and all of the licensees whose licenses had been subject to possible revocation in that proceeding. Settlements were not reached with any other persons who sought reconsideration or review of the *Algreg* Decision after it was issued.

[8] It is clearly in the public interest for parties to a large consolidated proceeding such as the *Algreg* case to seek to resolve their portions of the case, particularly when the settlements are on terms consistent with the Commission's public interest findings, as is the case here. Moreover, partial settlements can lead to full settlements, with the consequent saving in time and expenditure by all parties and tribunals. The ability of settling parties to achieve finality prior to the resolution of every other aspect of the case is clearly an incentive to them to reach settlements, and in the public interest. Hence, since many multi-party cases lend themselves better to piecemeal settlement rather than single settlements, restricting finality to the resolution of all aspects of a case would deprive the Commission of a powerful weapon for resolving litigation.

The assurance of finality with respect to the *Algreg* case will provide the owners of these systems with the incentive to invest in new and expanded facilities and services, and facilitate their access to the substantial funds needed for this capital-intensive business. Finality will also facilitate the participation of these Licensees in the regional networks that have become prevalent in the industry, thereby enhancing their ability to provide high-quality service to their customers.

In the alternative, the parties hereto request that the Commission sever the Licensees from the other parties to the *Algreg* proceeding.[9] Such severance will permit the Commission's decision with respect to the Licenses to become final and non-reviewable regardless of issues involving the other portions of the case. While this alternative would fail to reflect the fact that the orders as to Licensees have been final for the last seven months, as Licensees submit is the case, it would ultimately accomplish the same purpose and thus is acceptable to them if their preferred relief cannot be granted.

Respectfully submitted,

ALPHA CELLULAR

By Alan Naftalin /SK

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[9] We support the request for severance in the February 5, 1999 *Joint Notice of Settlement Agreements and Request for Rulings*, filed in the *Algreg* proceeding, at 9-10.

ARIZONA CELLULAR COMMUNICATIONS, INC.

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February 24, 1999

## CERTIFICATE OF SERVICE

I, Stephen Kaffee, an attorney licensed to practice law in the District of Columbia, hereby certify that on this 24th day of February, 1999, I sent a copy of the foregoing "Request for Declaration of Finality or for Other Relief" by hand delivery or by first-class U.S. mail, postage prepaid, to each of the following parties of record in CC Docket No. 91-142:

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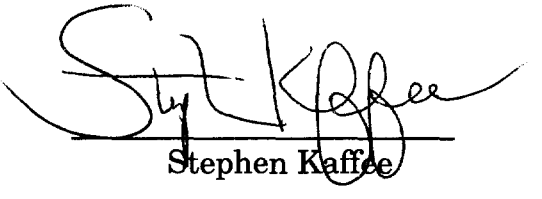
Courtesy copies of the foregoing "Request for Declaration of Finality or for Other Relief" also were delivered via first-class U.S. Mail, postage prepaid to the following persons, who are not parties of record in CC Docket No. 91-142: A. Thomas Carroccio, Esq.; Harry F. Cole, Esq.; and William J. Franklin, Esq.



Stephen Kaffee

* Via Hand Delivery